IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

RP.No. 871 of 2007()

---

ORDER IN WPC.12098/2006 Dated 28/04/2006

.....

REVIEW PETITIONERS:

---

1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

BY ADVOCATE GENERAL SRI.C.P.SUDHAKARA PRASAD

RESPONDENT:

---

MALABAR EDUCATIONAL & CHARITABLE TRUST
REP.BY THE MANAGING TRUSTEE, VALSAN MATTATHIL, YOGASALA ROAD, KANNUR 670001.

BY ADV. SRI.GEORGE POONTHOTTAM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**PIUS C. KURIAKOSE, J.**

.....

R.P.NO.871 OF 2007 IN W.P.(C)NO. 12098 OF 2006 AND C.M.APPLN.NO. 388 OF 2007 IN R.P.871 OF 2007

.....

DATED THIS THE 1ST OCTOBER, 2007

**O R D E R**

The Review Petition is directed against my interim order dated 28.4.2006 in the Writ Petition. The grievance of the writ petitioner, said to be a Trust formed for the purpose of promoting education and conducting educational institutions, was that Ext.P5 Government Order which obliges the Government to sanction a High School in Padiyoor Grama Panchayat as per the petitioner's application was being bypassed by the Government and the Writ Petition was filed seeking inter alia a writ of mandamus directing the respondents to issue orders sanctioning the school in favour of the petitioner on the basis of Ext.P5 G.O. followed by Ext.P9, the subsequent Government Order under which the Government have accorded sanction for establishing an aided High School in Padiyoor Grama Panchayat.

2. The interim order passed by me on admitting the Writ Petition was in the following terms:-

"..... In the meanwhile, there will be an

interim direction to the respondents not to consider any other application for sanctioning of schools within the limits of the Padiyoor Grama Panchayat till then (23.5.2006). In the meanwhile, the application submitted by the petitioner will be considered at the earliest in the light of Exts.P5 and P9, if possible before the commencement of the next academic year itself."

3. The C.M.Application seeks condonation of the delay of 471 days caused in the matter of filing the Review Petition.

4. A detailed counter affidavit is filed by Sri.Valsan Matathil, Managing Trustee of the writ petitioner-Trust.

5. Mr.C.P.Sudhakara Prasad, learned Advocate General addressed me on the Review Petition as well as the application for condonation of delay and Mr.George Poonthottam, Advocate would resist the submissions of the learned Advocate General.

6. Strong reliance was placed by the learned Advocate General on the judgment of the Supreme Court in **State of Kerala v. Prasad** (2007 (3) KLT 531), to argue that Ext.P5 order in as much as the same is not preceded by the statutory procedure which is envisaged by

Rule 2 and 2A of Chapter V of the Kerala Education Rules is per se illegal. The learned Advocate General also relied on the same decision to argue that the guarantee of equality enshrined in Article 14 of the Constitution cannot be a guarantee for perpetuation of an illegality. The learned Advocate General also submitted that while the Government agrees that there is educational need in Padiyoor Grama Panchayat justifying establishment of a new High School, there are other individuals or institutions already having schools at lower levels within the area of the Panchayat and they are much more eligible for being accorded sanction than the writ petitioner which does not have any existing school at all.

7. Mr.George Poonthottam submitted that complaining of inertia in the matter of complying with my interim order, Cont. Case No.619 of 2006 was filed by the respondent-writ petitioner and that on finding prima facie contempt, the matter was referred by me to the Division Bench. Mr.Poonthottam referred to Annexure-I affidavit submitted by the Secretary to Government, Department of General Education before the Division Bench explaining that there is no contempt in the matter. Counsel submitted that after considering that affidavit, the Division Bench directed the Secretary to Government to appear before the

court on 6.9.2007 and that later, the Writ Petition and the Contempt Case were both posted before the Division Bench. The matter was argued at length before the Division Bench and according to Mr.Poonthottam, the Division Bench was not prepared to accept the arguments advanced in justification of the Government's stand. According to the learned counsel, it was thereupon submitted that the Government would withdraw the order passed pursuant to the direction given by the court and tender unconditional apology with a further undertaking that the Government will pass fresh orders within one month of 6.9.2007. Annexure-III affidavit submitted by the Secretary to Government was highlighted before me by the learned counsel. Ultimately, the Division Bench permitted the Government to withdraw the order and further directed that the respondents shall pass fresh orders in accordance with the interim order passed by me on 28.4.2006. Annexure-IV is the judgment passed by the Division Bench in Cont. Case No.619 of 2006.

8. There was considerable controversy at the Bar as to what actually transpired before the Chief Justice's Court before Annexure-IV judgment was passed by the Division Bench. According to the learned Advocate General, the response of the Division Bench to the request

for permission to move this Court for review was that the Government does not need the leave of the Division Bench to move for a review. According to Mr.Poonthottam, the Advocate General's request for liberty for moving appropriate application either for review or for modification of the order was declined by the Division Bench. I do not find it necessary to settle that controversy.

9. The submissions of the learned Advocate General, founded as they were on the judgment of the Supreme Court in **State of Kerala v. Prasad** (2007 (3) KLT 531), that Ext.P5 Government Order referred to in my interim order dated 28.4.2006 was illegal, were certainly forceful. Had my attention been drawn to the judgment of the Supreme Court in **State of Kerala v. Prasad** (2007 (3) KLT 531) or to the present stand of the Government that there are more eligible aspirants in the Panchayat, perhaps I would not have passed the order which virtually directs implementation of Ext.P5. But I find that under Annexure-IV judgment, the Division Bench has specifically directed the Secretary to Government to pass orders in accordance with my interim order within one month of 6.9.2007, practically approving and confirming my interim order. I will not be able to entertain the Review Petition in the face of Annexure-IV judgment.

Hence I dismiss the application for condonation of delay and consequently dismiss the Review Petition also.

**(PIUS C.KURIAKOSE, JUDGE)**

tgl